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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re L.C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. L.C., Defendant and Appellant.	A126222 (Del Norte County Super. Ct. No. JDSQ08-6001)

The minor appeals from orders adjudging him a ward of the juvenile court and placing him on probation after finding he committed two burglaries, unlawfully drove a vehicle and vandalized property. We reject the minor's argument that the structure he unlawfully entered was not a "building" within the meaning of Penal Code[1] section 459, and his contention that there is insufficient evidence establishing the corpus delicti of the later burglary. Accordingly, we shall affirm.

Background

In July 2009, a juvenile wardship petition was filed alleging that the minor had committed three counts of burglary (§ 459), two counts of unlawful taking of a vehicle (Veh. Code, § 10851), one count of vandalism (§ 594) and one count of grand theft (§ 487). The following evidence was presented at a contested jurisdiction hearing:

[1] All statutory references are to the Penal Code unless otherwise noted.

Officer Justin Gill testified that on July 4, 2009, he went to the Del Norte Unified School District to investigate a report of a stolen vehicle. The area where the school district's vehicles are kept was described as "really big metal storage buildings" "completely enclosed except for the front, and there's two giant . . . chain-link gates that they chain shut." When he arrived the gates "appeared to be busted open" and there was a hole cut in the chain-link fence. Inside, he found six vehicles that had been vandalized, including one that had been driven into a wall. A review of a surveillance tape taken earlier that morning showed a young male walk through the parking lot, cut a hole in the fence and enter the property through the hole. Officer Gill also reviewed a surveillance tape from an incident on June 10, in which two people were seen to enter the area, and they "got into a vehicle, rammed it out through the gates and drove it around the corner."

On July 14, Officer Gill received an anonymous tip implicating the minor in the vandalism. When officers executed a search warrant on the minor's home they found a pair of shoes that matched a print found at the school district property and a shirt that matched clothing fibers found at the scene. During an interview of the minor on July 18, the minor admitted that he was involved in the vandalism of the school district property. He told the officers that he went to the school on three different occasions. He admitted that he entered the property in June with a friend. On the night of July 3/July 4, he "hopped a fence, got some bolt cutters, cut a hole in the fence and drove the vehicle around." He crashed and abandoned the vehicle, which was subsequently located by the police. Finally, he admitted that he returned to the property on July 10 and stole a projector. At the officer's request, the minor retrieved the projector from where he had hidden it in his backyard and returned it to the officers. The projector had a school district identification tag on it.

The court dismissed one count of burglary and one count of unlawful taking of a vehicle arising out of the June 10 incident on the ground that there was insufficient evidence of the corpus delicti of those crimes. The court also dismissed a grand theft charge relating to the minor's alleged theft of the projector on the grounds that there was

insufficient evidence of the value of the projector and of the corpus delicti of that crime.[2] The court sustained the petition with respect to the remaining counts and found that the minor was in violation of his existing probation. At the dispositional hearing, the minor was continued on formal probation. The minor filed a timely notice of appeal.

Discussion

1. The Structure was a "Building"

The minor contends that the two burglary findings must be reversed because there is no substantial evidence the school district's parking structure was a "building" for purposes of section 459. Under section 459, "[e]very person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building . . . with intent to commit grand or petit larceny or any felony is guilty of burglary." Under this statute, a building is a structure that has walls on all sides and is covered by a roof. (*People v. Labaer* (2001) 88 Cal.App.4th 289, 296; *In re Amber S.* (1995) 33 Cal.App.4th 185, 187.) "A building is ' "a structure which has a capacity to contain, and [is] designed for the habitation of man or animals, or the sheltering of property." ' " (*Labaer*, at p. 296.) Because the Legislature intended the broadest possible interpretation of "building" to be used in the context of the burglary statutes, " '[w]hat comprises four walls and a roof has been broadly construed.' " (*Ibid*.) "The walls, in whatever form, must provide a significant barrier to entrance without being cut or broken. [Citation.] The composition of the walls is not an important factor." (*Ibid*.) "The walls can take various forms and need not reach the roof [citation] . . . . 'The proper question is whether the nature of a structure's composition is such that a reasonable person would expect some protection from unauthorized intrusions.' " (*Amber S.*, at p. 187.)

In *People v. Brooks* (1982) 133 Cal.App.3d 200, 202, the court found that a loading dock that had two concrete walls, two walls made of nine-foot high chain link fencing and a roof was a building for purposes of section 459. Relying on the Legislature's intent that the provision be interpreted broadly, the court concluded that the

[2] The prosecutor did not object to the dismissal of these counts.

structure was designed to act as a barrier to entrance insofar as no one could "enter the locked enclosure except through illegal means that is, without breaking into the concrete block construction, cutting the chain link fence and tin or breaking the locks on the gates." (*Id*. at p. 206.)

The minor argues that there is insufficient evidence to establish that the school structure here had four complete walls. He questions whether the chain-link gates, although capable of being locked, qualify as a fourth wall because "there was no evidence in the record to establish that the gate or fence . . . was actually attached to the buildings." He adds that "even if the court were to attribute the described 'gates' to the structure in this case, there is no evidence in the record establishing the dimensions of the gates that would permit the court to infer that the gates formed a fourth wall to the structure." An officer testified, however, that the structure was "[c]ompletely enclosed except for the front, and there's two giant . . . chain-link gates that they chain shut." The record establishes that the minor had to cut a hole in the fence to enter the locked structure. As in *People v. Brooks*, *supra,* 133 Cal.App.3d at page 202, this structure, as described by the testimony, was clearly designed to act as a barrier to entrance. Substantial evidence supports the finding that the structure was a building within the meaning of section 459.

2. The July 10 Burglary

The minor contends that the finding that he committed a burglary on July 10, when—although uncertain of the precise date—he admitted having taken the school's projector, must be reversed because there is insufficient evidence to establish the corpus delicti of the crime.

"In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal agency as its cause. In California, it has traditionally been held, the prosecution cannot satisfy this burden by relying exclusively upon the extrajudicial statements, confessions, or admissions of the defendant." (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1168-1169

"Prior to *Alvarez*, the rule had two aspects: (1) an evidentiary function barring the admission of a defendant's extrajudicial statements without first introducing independent proof of the corpus delicti, and (2) a substantive role imposing a burden upon the People to present corroborating evidence of such out-of-court statements, and requiring a jury instruction prohibiting a conviction based on those statements alone. [Citation.] In *Alvarez*, our Supreme Court considered the effect of Proposition 8 on the rule. Proposition 8 'added section 28(d), entitled Right to Truth-in-Evidence, to article I of the California Constitution' declaring that with certain exceptions, ' "relevant evidence shall not be excluded in any criminal proceeding." ' [Citation.] Because 'an incriminatory statement by the accused himself is relevant evidence' [citation], the Alvarez court held 'that section 28(d) did abrogate any corpus delicti basis for excluding the defendant's extrajudicial statements from evidence.' [Citation.] But the court reached the opposite conclusion as to the rule's substantive component, holding that 'section 28(d) did not abrogate the corpus delicti rule insofar as it provides that every conviction must be supported by some proof of the corpus delicti aside from or in addition to such statements, and that the jury must be so instructed.' [Citation.]Thus, it is clear the substantive aspect of the corpus delicti rule remains viable as to trial convictions." (*People v. Herrera* (2006) 136 Cal.App.4th 1191, 1200-1201, italics omitted.) The rule applies as well in juvenile delinquency proceedings. (See *In re I. M.* (2005) 125 Cal.App.4th 1195, 1202-1204.)

The minor contends that there is no evidence apart from his admission that a burglary occurred on July 10, i.e., that someone unlawfully entered the school district property with the intent to commit a felony or theft. There was no testimony by a police officer or school district official that there was an unlawful entry on to the property on that day or that the projector that the minor turned over to the police had been removed from the school premises without the school's authorization. Officer Gill testified extensively about his investigation of the July 4 incident. During the course of that investigation he reviewed surveillance tapes that showed one person entering the property on July 4 and committing vandalism. He also watched a tape that showed two men enter

the property on June 10 and commit vandalism and theft. Upon executing a search warrant at the minor's home on July 17, he collected clothing of the minor resembling clothing worn by one of the males in the surveillance videos, sneakers that matched shoe prints found inside one of the vandalized buildings on July 4, and a torn red t-shirt that matched a piece of red cloth found in the fence surrounding the school compound on July 4. He did not mention the July 10 incident until discussing his subsequent interrogation of the minor. He testified that he asked the minor "if he [had taken] the projector that was stolen" and that the minor went to his back yard and brought back the projector. That the minor had the projector is insufficient, he contends, to establish that he obtained it by commission of a burglary on or about July 10.

"[T]he modicum of necessary independent evidence of the corpus delicti . . . is not great. The independent evidence may be circumstantial, and need only be 'a slight or prima facie showing' permitting an inference of injury, loss, or harm from a criminal agency, after which the defendant's statements may be considered to strengthen the case on all issues." (*People v. Alvarez, supra*, 27 Cal.4th at p. 1181.) "This rule is intended to ensure that one will not be falsely convicted, by his or her untested words alone, of a crime that never happened." (*Id.* at p. 1169.)

We agree with the Attorney General that there is sufficient independent evidence here to establish that the school was indeed burglarized. The minor's possession of a projector belonging to the school district but hidden in his back yard supports a reasonable inference that the property was unlawfully removed from the school premises. "[T]he corpus delicti rule does not require independent proof that the defendant is the perpetrator of the crime." (*People v. Ledesma* (2006) 39 Cal.4th 641, 721.) While the minor conceivably could have obtained the projector in many other ways, the independent evidence necessary to establish the corpus delicti need not eliminate all such possibilities. " '[T]he prosecution need not eliminate all inferences tending to show a noncriminal cause of [the harm].' [Citation.] The corpus delicti may be established 'even in the presence of an equally plausible noncriminal explanation of the event.' " (*People v. Ochoa* (1998) 19 Cal.4th 353, 407.) "The independent proof may be circumstantial and

need not be beyond a reasonable doubt, but is sufficient if it permits an inference of criminal conduct, even if a noncriminal explanation is also plausible. [Citations.] There is no requirement of independent evidence 'of every physical act constituting an element of an offense,' so long as there is some slight or prima facie showing of injury, loss, or harm by a criminal agency." (*Alvarez, supra,* 27 Cal.4th at p. 1171.) Moreover, the substantial evidence of the minor's recent involvement in other burglaries at the school provides additional support for the inference that he did not innocently gain possession of the school's projector. (*People v. Hays* (1950) 101 Cal.App.2d 305, 310-311 [evidence of prior unrelated fires on the premises provided independent evidence of incendiary origin of fire underlying alleged arson]; *People v. Andrews* (1963) 222 Cal.App.2d 242, 246 ["the cumulative factor is an important one"].) On the record before us, we have no doubt that the minor did not admit committing a crime that never occurred.

The minor also contends that there is insufficient evidence establishing that he entered the property on July 10 with the intent to commit a theft or felony. The two prior incidents combined with his admission that he committed a theft on July 10 support a reasonable inference that he entered the property that evening with the intent to commit a theft or felony. (See *People v. Matson* (1974) 13 Cal.3d 35, 41 ["Although the People must show that a defendant charged with burglary entered the premises with felonious intent, such intent must usually be inferred from all of the facts and circumstances disclosed by the evidence, rarely being directly provable"].)

Disposition

The jurisdiction and disposition orders are affirmed.

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Pollak, J.

We concur:

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McGuiness, P. J.

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Siggins, J.